IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2744 OF 1988

Smt. Laxmi Narayan Adval,
Adval Plot, Gokhale Marg,
Mulund (East), Mumbai-400081 ...Petitioner.

V/s

1. The State of Maharashtra.
2. The Municipal Corporation of Bombay. ...Respondents.

Ms. Snehal Paranjape amicus curae for the petitioner.

Mr. A.Y. Sakhare with Mr. Viond Mahadik for the respondents.

CORAM: R.M.S. KHANDEPARKAR &
V.M. KANADE, JJ.

DATE : 12th September, 2005

ORAL JUDGMENT: (Per R.M.S. Khandeparkar, J.)

1. The petitioner herein seeks relief in the nature of quashing of the acquisition proceedings in relation to the area of 314.06 sq. meters of the property claimed by the petitioner abutting to Gopal Krishna Gokhale Road at Mulund along with alternative relief in the form of direction to the respondents - Corporation to grant FSI/TDR to the extent of the acquired area in lieu of compensation thereof, in addition to the compensation for the structure which

was demolished by the Corporation in the course of acquisition of the land.

2. Few facts relevant for the decision are that the area of 28.43 sq. meters of land was acquired by the Corporation on 10/09/1968 for the purpose of widening of Gopal Krishna Gokhale Road. As there was further proposal for widening of the said road to the extent of 44 ft., notices were issued for revision of the street line of the said road to 44 ft. on 29/05/1969 and further to the extend of 60 ft. on 08/09/1970. Notices in that regard under section 297 of the Municipal Corporation Act, 1888, hereinafter called as "the said Act", were issued on 21/07/1969 and 18/09/1970 respectively and were published in the Official Gazette for the suggestions and objections by the public. The petitioner herein did not raise any objection for such change in the street line. Subsequently, in the year 1972, the area of 113.34 sq. meters was sought to be acquired from the petitioner's land for the purpose of widening the road in alignment with the street line revised in 1970. The possession of the said land of the petitioner was taken on 10/09/1968 and 07/12/1972. Though the Corporation offered to pay compensation at the rate of Rs 15.31 per sq.meter in relation to 28.43 sq.meters of the land acquired in the year 1968 and at the rate of Rs

95/- per sq. meter in relation to the 113.34 sq. meters of the land acquired in 1972, the petitioner refused to accept the same. After acquisition of the land in the year 1972, the petitioner invariably went on making representations to the Corporation and various other authorities making grievance against the action on the part of the respondents - Corporation for acquiring the said land and causing loss to the petitioner, further complaining that her source of income has been affected on account of such acquisition of the land.

3. Though the facts relating to the offer of Corporation on account of acquisition of land are undisputed, it is the case of the petitioner that apart from the above referred acquisition, some portion of the land was also acquired in the year 1957 and further that the petitioner had been repeatedly requesting for grant of FSI/TDR facility to the petitioner in respect of the area acquired, apart from the compensation for the portion of the building which has been demolished in the course of the acquisition, the petitioner has not been offered either of the things and, therefore, the petitioner was compelled to write a letter to the Hon’ble Chief Justice which was converted in to this petition. On the other hand, it is the case of the respondents that the petitioner is

not entitled to claim FSI or TDR, the same having not been claimed within the specified period from the date of taking over of the possession and in accordance with the provisions of law, and the compensation which was calculated by the authorities was in accordance with the provisions of law comprised under the said Act, and the same having not been accepted, the petitioner is not justified in approaching the Court.

4. The learned advocate appearing for the petitioner submitted that though the respondents - Corporation have expressed lack of knowledge regarding acquisition proceedings in the year 1957, the fact remains that the petitioner had purchased the property under the registered sale deed which disclosed that the total area of the land purchased by the petitioner was 686 sq.yards which is equivalent to 595 sq. meters approximately. Undisputedly, the total area available for the petitioner's plot at the site, as of today, is 214.06 sq. meters. It is, therefore, obvious that the area of about 381 sq. meters has been acquired by the Corporation for widening of the road. If the contention of the respondents that in 1968 and in 1972 the total area which was acquired was to the extent of 141.77 sq. meters, the remaining area must have been acquired in the year 1957. It is her further contention that the so-called acquisition in the year

1972 was not in accordance with the provisions of the said Act as, undisputedly, in the land in question, there was a building comprising of five shops and, being so, the acquisition of such land having building thereon was not permissible in exercise of powers under section 298 or 299 of the said Act, though the Corporation in such cases could have exercised the powers under section 296 of the said Act, but, in that case, the procedure as contemplated under the Land Acquisition Act, 1894, hereinafter called as "the Acquisition Act", was required to be followed in view of the provisions comprised under section 91 of the said Act. The reliance is sought to be placed on the decision of the Division Bench of this Court in that regard in The Municipal Corporation of Greater Bombay, etc. Vs. Durgadas Shankarrao Rege and another reported in **AIR 1980 Bombay 93**. The learned Counsel for the petitioner also strenuously argued referring to various letters and circulars that the respondents - Corporation could not have denied the facility of FSI/TDR to the petitioner and submitted that the same should be directed to be made available to the petitioner.

5. The learned Senior Counsel appearing for respondent No.2, on the other hand, sought to raise the preliminary objection regarding laches on the part

of the petitioner in approaching the Court and relied upon the decision of the Apex Court in State of M.P. and anr. vs Bhailal Bhai reported in **AIR 1964 SC 1006** in that regard. Without prejudice to this submission, he submitted that the acquisition as far as 1957 is concerned, there are no records available nor the petitioner has been able to place on record any material in that regard which can substantiate her claim about acquisition of such land and that too without any compensation being paid to her. He further submitted that the jurisdiction of the Corporation was extended to the area of Mulund in the year 1957 but no such records regarding acquisition of the land in question in the year 1957 are available with the respondents. As regards acquisition in the year 1968 and 1972, he submitted that those acquisitions were in exercise of powers under section 299 of the said Act. He further submitted that the provisions of section 296 were not attracted in the case in hand as the acquisition was after demolition of the structure on the land in question and, therefore, the Corporation was empowered to exercise powers under section 299 for the purpose of acquisition of land. According to the learned Counsel for the respondents - Corporation there was no application filed by the petitioner in accordance with the provisions of law and within the prescribed

period, claiming facility of FSI/TDR and, therefore, she could not have claimed such facility for the first time in the year 1988. Even otherwise, according to the learned Counsel, there was no proper application and the plan submitted to claim such facility at any point of time. As regards the land acquired, compensation was calculated in accordance with the provisions of law by the authorities under section 301 of the said Act and though the same was offered to the petitioner, she illegally refused to accept the same. In the circumstances and such acquisition being in exercise of powers under section 299, the question of awarding even interest thereon does not arise. The reliance is sought to be placed in the decision of the Apex Court in Municipal Corporation of Greater Bombay and Others vs. Central Bank of India and another reported in **(1994) 4 SCC 690**.

6. As regards the preliminary objection which is sought to be raised, it can hardly be disputed that when the party approaches the Court is not diligent and does not explain unreasonable delay in bringing the grievance to the notice of the Court, certainly, the Court can refuse to exercise its writ jurisdiction. The Apex Court in that regard has clearly ruled in Bhailal Bhai's case (supra) that, as a general rule, if there has been unreasonable delay,

the Court ought not ordinarily lend its aid to a party by extraordinary remedy of mandamus. However, it is not required to refer to various judgements but suffice it to observe that it is also well settled law that when a patent illegality is brought to the notice of the Court, it does not preclude the Court from exercising its writ jurisdiction irrespective of the fact that the delay on the part of the party in approaching the Court is not well explained. Here is a case where by a letter written by the Petitioner to the Hon'ble Chief Justice, a grievance was sought to be made that the Corporation, in high-handed manner, sought to take over landed property of the petitioner and that too without offering the compensation. Being so, the Court taking notice of the said complaint had registered the same as Writ Petition. After registering the same as Writ Petition, a proper notice was issued to the respondents - Corporation and after hearing the learned Counsel for the respondents - Corporation, rule came to be issued on 28/11/1988. At the time of issuance of the rule, respondent No.2 did not reserve any right to raise any such objection regarding the delay in approaching the Court during the final hearing of the matter. The respondents - Corporation having not reserved such right, it is too late, at this stage, for the respondents to make a grievance about laches on the part of the petitioner

in approaching the Court. It is also pertinent to note, as has been submitted on behalf of the petitioner, that the respondents have not made any grievance in that regard in any of the affidavits filed in the matter. Obviously, therefore, it would be highly improper to non-suit the petitioner on such technical grounds at this stage and hence the objection sought to be raised in that regard has to be rejected.

7. As regards the grievance of the petitioner about acquisition of the land in the year 1957, it would not be possible to take notice of such grievance in the present Petition as no material whatsoever has been placed on record by the petitioner to justify her grievance regarding acquisition of land by the Corporation and that too without any compensation to the petitioner. Undoubtedly, the measurement of the plot as it stands today discloses the same to be 214 sq. meters in area. It is also undisputable fact that the sale deed executed in 1956 in relation to the plot purchased by the petitioner disclosed the area of 686 sq. yards to be the area of the plot. It is also undisputed fact that the area of 141.77 sq. meters has been acquired by the Corporation during the period from 1968 to 1972. Also, it cannot be disputed that one of the boundaries of the plot in question happens

to be the municipal road for which the area was acquired in the year 1968 and 1972. The affidavit filed by the respondents - Corporation also discloses that prior to 1968 width of the road in question was 30 ft, whereas it was widened to 44 ft. under the decision dated 29/05/1969 and further to 60 ft. in the year 1970. Obviously, for increase in the width of the road in the year 1968, the land to the extent of 28.43 sq. meters and for increase in the width to 60 ft an area to the extent of 113.34 sq.meters in the year 1972 was acquired. The petitioner, apart from making a statement to the effect that the land was acquired in the year 1957 has not been able to show as to what was the width of the road prior to 1957 or whether the width of the road to the extent of 30 ft was widened to that extent in the year 1957. Neither there is any documentary material to show that there was actual acquisition of the land from the petitioner's plot in the year 1957 nor even any correspondence between the petitioner and the Corporation or any other authority in that regard during the relevant period or even thereafter. Certainly, if the land was acquired in the year 1957, the petitioner would have made grievance about it at the time of acquisition or immediately thereafter. There is no material disclosing even a letter having been written by the petitioner at any time prior to

1968, making grievance about acquisition of the land from the petitioner's plot for widening of the road in 1957. In the background of these facts, therefore, on mere allegation that that the land of the petitioner was acquired by the Corporation in the year 1957, it would not be possible for this Court, in writ jurisdiction, to issue any direction in respect thereof.

8. As regards the acquisition in the year 1968, there is a clear admission on the part of respondent No.2 that such a land was acquired to the extent of 28.43 sq. meters from the petitioner's plot for the purpose of widening of the road. There is also admission on the part of respondents - Corporation that no compensation has been paid for such acquisition though there was an obligation on the part of the respondents to do so. At the same time, it is the case of the respondents that they had calculated the compensation in exercise of powers under section 301 of the said Act and had offered the same to the petitioner who refused to accept the same. The petitioner on her part also has not disputed the fact that the compensation was offered by the respondent but was refused to be accepted by the petitioner. It is, however, the case of the petitioner that the petitioner ought to have been offered necessary

FSI/TDR on account of such acquisition, besides compensation towards the structure, and having not offered the same, the petitioner had refused to accept the compensation which was offered. It is her further contention that the area of the petitioner was not required to be acquired for the purpose of widening of the road and the acquisition is therefore illegal.

9. Undoubtedly, consequent to the acquisition of the land, the road was widened and area of 28.43 sq. meters of the petitioner's land already forms the part of the public road. Undisputedly, there was no structure of whatsoever nature in the said area and the respondents - Corporation, therefore, could have exercised powers under section 299 to acquire the same as it was situated within the regular line of the street demarcated in terms of exercise of powers under section 297 of the said Act. Being so, no fault can be found with the exercise of powers by the Corporation under section 299 to acquire the said area and to offer compensation as was offered by the respondents. The petitioner was clearly not justified in insisting for FSI/TDR on account of such acquisition. The learned advocate for the petitioner has not been able to point out any provision of law which could have entitled the petitioner in 1968 to claim any such FSI/TDR on account of acquisition of

the said plot of land. Undoubtedly, attention was sought to be drawn to the Circular of the year 1987 which provided for such facility to persons whose land was acquired. However, such a claim was required to be made within a period of 12 years. The Circular, on the face of it, nowhere discloses to be enforceable retrospectively. Even assuming that it could have been claimed within 12 years prior to 1987, the acquisition was certainly prior to the said period of 12 years as it was prior to 15/07/1975. The materials on record nowhere disclose any such claim could have been made in accordance with the provisions of law by the petitioner prior to 15/07/1975 consequent to the acquisition of land in 1968. Hence, grievance in relation to acquisition of land in the year 1968 does not survive except that the petitioner would be entitled for compensation which was offered to her by the respondents, having calculated in exercise of powers under section 301 of the said Act.

10. As regards the land which was sought to be acquired in 1972 to the extent of 113.34 sq. meters in area, the contention of the petitioner is that the said acquisition could not have been in exercise of powers under section 299 of the said Act as there was building in the said area, whereas it is the contention of the respondents that the acquisition was

subsequent to the demolition of the building. Indeed, the respondents - Corporation in their reply have stated that the respondents have acquired open land under section 299 of the said Act after the demolition of the built up structure therein. This fact fortifies the petitioner's contention that the Corporation ought to have followed the provisions of section 296 of the said Act. Though the respondents - Corporation have sought to contend that the land which was acquired in 1972 was after demolition of the built up structure therein, apart from mere statement in that regard, the respondents have not been able to point out any material which could disclose as to at what point of time the building was demolished and on what date the acquisition proceedings, after demolition of such building, were initiated in exercise of powers under section 299 of the said Act. Mere statement or claim by the respondents that the powers exercised under section 299 were after demolition of the building would not be sufficient in such cases where there is specific challenge by the petitioner to the acquisition on the ground that the powers under section 299 were not available on account of building being situated in the land sought to be acquired. Undisputedly, in the case in hand, there was a building situated in the land in question comprising of five shops. Being so, unless the

respondents - Corporation have resorted to the powers comprised under section 296, they could not have proceeded to acquire the land and, certainly, provisions of section 299 could not have been invoked. The decision of the Division Bench of this Court in Durgadas Rege's case (supra) in that regard is very clear. The Division Bench therein, after taking into consideration various provisions of the said Act, clearly ruled that the analysis of the relevant sections shows that sections 297 to 301 of the Act constitute a complete scheme for a particular purpose. The acquisition under sections 298 and 299 can only be in respect of land falling within the regular line of the street. Further, it can only be in respect of land which is not occupied by a building or which is occupied only by a compound wall or a platform, verandah, step or some other structure which is external to the building. Any other type of land or any building can only be acquired under Section 296 of the Act.

11. It was sought to be argued that the building comprising of five shops was demolished as being the extension of the existing building and not being a part of the building itself. Mere submission in that regard cannot justify illegal action on the part of the respondents in resorting to the provisions of

section 299 of the said Act to acquire the land comprising of the building therein. Certainly, therefore, the respondents - Corporation were not justified in invoking the powers under section 299 in relation to the land in question for its acquisition and the powers which were available for the said purpose were squarely under section 296. Undisputedly, in terms of section 91, if the Corporation desires to exercise powers under section 296, it has to follow the procedure prescribed under the Land Acquisition Act, 1894. It is a matter of record that no such procedure was followed by the Corporation in relation to the land which was acquired in the year 1972. Being so, petitioner is justified in contending that there was some sort of high-handedness on the part of the respondents - Corporation in proceeding to acquire the land in question to the extent of the area of 113.34 sq. meters in the year 1972.

12. All said and done, the fact remains that the area of 113.34 sq.meters of the petitioner's plot already forms the part of the road and the same is being used as part of the public road since 1972. Being so, merely because the respondents have not followed the procedure prescribed under the law for the purpose of acquisition of the said land, taking into

consideration the number of years elapsed from the date of taking over of the possession of the land as also the continuous utilisation of the said land as the public road since the year 1972 and we are in the year 2005, no purpose would be served in setting aside the acquisition at this stage. Undoubtedly, the petitioner will have to be duly compensated for such acquisition. Needless to say that such compensation will have to be in accordance with the provisions of the Land Acquisition Act and not in terms of powers exercisable under section 301 of the said Act.

13. As regards the claim for FSI/TDR, here again, reference was to the Circular of the year 1987 and 1995. Either of the Circulars nowhere discloses that the same could have been retrospectively enforced. The period of 12 years under both the Circulars even if allowed to be related to the period retrospectively, the petitioner could have made her claim earliest by 14/07/1975. Since the acquisition relates to much prior period and, in any case, the petitioner failed to putforth such claim in accordance with the provisions of law within the prescribed period, it will not be appropriate for this Court to give any direction to the respondents to grant such facility to the petitioner. The question of quashing of the acquisition on the ground that the land of the

petitioner was not required for the road also does not arise as, undisputedly, the area which has been acquired is already being used as a part of the public road. The contention of the respondents that there is a clear resolution of the Corporation to widen the road to 60 ft. in the year 1970 has also not been disputed nor it is the case of the petitioner that a smaller road would justify in the area. In any case, it is for the competent authorities to decide about the necessity of the width of the road and the Courts have no expertise in that regard. In case of any dispute in that respect also, it would not be appropriate for this Court, in writ jurisdiction, to decide the said issue. Being so, the question of either quashing of the acquisition on any of the grounds sought to be argued or issuing of direction to the respondents - Corporation to grant the facility of FSI/TDR to the petitioner does not arise.

14. As regards the decision of the Apex Court in the case of Central Bank of India's case (supra) and the contention of the learned Counsel appearing for respondent No.2 that no interest would be payable on the compensation to be paid to the petitioner, certainly, that would apply in case of compensation payable for the land acquired in 1968 and for which the compensation was fixed in terms of provisions of

section 301 of the said Act. However, the same proposition will not apply to the land which has been acquired in accordance with the provisions of the Land Acquisition Act and for the same reason in exercise of powers under section 296 of the said Act. Hence, the compensation to be calculated in relation to the land acquired in 1972 will have to be alongwith interest which has to be calculated in terms of the provisions of the Land Acquisition Act.

15. In the facts and circumstances of the case, therefore, it would be appropriate to direct the respondents - Corporation to pay to the petitioner sum of Rs 435.26 as was fixed towards the acquisition of the area of 28.43 sq.meters in the year 1968 within a period of eight weeks and further to issue direction to the Corporation to submit all the materials in relation to the area of 113.34 sq. meters acquired by the respondents in the year 1972 to the Collector of Mumbai for the purpose of fixation of the compensation in relation to the said area in accordance with the provisions of law comprised under the Land Acquisition Act, 1894. The date for fixation of compensation in the absence of issuance of notification under section 4 of the Land Acquisition Act shall be the day on which the possession of the land was taken by the Corporation for the purpose of

road. The respondents shall submit all the records within a period of 8 weeks from today and the Collector shall ascertain and fix the compensation bearing in mind the provisions of the Land Acquisition Act of 1894 in relation to the area of 113.34 sq. meters which was acquired in 1972 within a period of 12 weeks after hearing the petitioner as well as the Corporation and pass the award within the said period. The award so passed shall be communicated to the parties within a period of 15 days from the expiry of the said period and the respondents - Corporation shall pay the amount so fixed within a period of two weeks on receipt of the intimation of the award. Needless to say that the petitioner, if aggrieved by the compensation, shall be at liberty to pursue remedy as available under section 18 of the Land Acquisition Act, 1894 within six weeks from the date of receipt of the notice of the award by the Collector to the petitioner in that regard. Rule is made absolute accordingly with costs to be paid by respondent No.2 to the petitioner.

16. At this stage, the learned advocate for respondent No.2 prays for stay of the order passed today which is opposed by the learned advocate for the petitioner. The matter relates to the land which was admittedly acquired by the Corporation in the year

1972. The records nowhere disclose due compliance of the provisions of section 296. Mere claim of exercise of powers under section 299 does not justify non-payment of compensation in terms of provisions of the Land Acquisition Act. In the background of these facts, we do not find any justification for grant of stay. Request of stay is, therefore, rejected.

(R.M.S.KHANDEPARKAR,J.)

(V.M. KANADE, J.)